

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NORTH CAROLINA (Asheville)

No. 1:20-cv-00066-WGY

CARYN DEVINS STRICKLAND, formerly known as JANE ROE,
Plaintiff

vs.

UNITED STATES OF AMERICA, et al,
Defendants

For Zoom Hearing Before:
Judge William G. Young

Final Pretrial

United States District Court
District of Massachusetts (Boston)
One Courthouse Way
Boston, Massachusetts 02210
Thursday, July 27, 2023

REPORTER: RICHARD H. ROMANOW, RPR
Official Court Reporter
United States District Court
One Courthouse Way, Room 5510, Boston, MA 02210
bulldog@richromanow.com

A P P E A R A N C E S

COOPER J. STRICKLAND, ESQ.

CARYN STRICKLAND, ESQ.

Law Office of Cooper Strickland

P.O. Box 92

Lynn, NC 28750

(828) 817-3703

Email: Cooper.strickland@gmail.com

For the plaintiff

DANIELLE WOLFSON YOUNG, ESQ.

MADELINE McMAHON, ESQ.

DOJ - Civ

Federal Programs

1100 L Street NW, Suite 11526

Washington, DC 20005

(202) 616-2035

Email: Danielle.young2@usdoj.gov

For defendants

1 P R O C E E D I N G S

2 (Begins, 12:30 p.m.)

3 THE CLERK: Now hearing Civil Matter Caryn Devins
4 Strickland versus the United States of America.

5 THE COURT: Well good morning counsel. This is a
6 final pretrial conference held pursuant to Rule 16 of
7 the Federal Rules of Civil Procedure. It's held on our
8 zoom platform. Our host for the conference is Courtroom
9 Deputy Clerk, Jennifer Gaudet. The proceedings are
10 taken down by our Official Court Reporter, Rich Romanow.
11 I have law clerks on the line.

12 The proceedings are open to the public. If any
13 members of the public are present, you are of course
14 welcome, but I must remind you to keep your microphone
15 muted and that the rules of court remain in full force
16 and effect.

17 With that said, would counsel introduce themselves
18 once again and we'll get going, starting with the
19 plaintiff.

20 MS. STRICKLAND: Thank you, your Honor. Karen
21 Strickland and Cooper Strickland is with me.

22 THE COURT: Yes, good morning to you both.

23 MR. STRICKLAND: Good morning, your Honor.

24 THE COURT: And for the defense?

25 MS. YOUNG: Daniel Young.

1 MS. McMAHON: Madeline McMahon.

2 THE COURT: And good morning to the two of you.

3 Well let me start by saying that the joint
4 pretrial memorandum is excellent and of considerable
5 help to the Court and provides a very good framework for
6 our discussion this morning, and I thank you for it.
7 Let's get some things clear here.

8 This is a jury-waived case and both parties
9 understand that and that's how we're going to proceed.
10 So I do understand the plaintiff's offer here, but we're
11 not going to try it without live witnesses, credibility
12 is an issue, and so we're going to try it as a normal
13 jury-waived case. The defense's suggestion that it will
14 take 5 days to try is a very reasonable one and I think
15 we will adopt that as the limit of the days for trial of
16 this case.

17 I do -- well I do urge the following, just to
18 start. I ask for a more detailed agreement as to the
19 facts, and what you've given me is sort of two separate
20 recitations of facts. And you recognize that you
21 haven't got time -- you haven't had the time to sit down
22 together and see if you can't hammer out a joint
23 statement of facts, even though it's not complete. I
24 was asking for one that was more detailed than I had at
25 the summary judgment level and I'm still asking. But

1 I'm not requiring it.

2 What you've given me though is, um, I cannot
3 accept it as a -- I view it as -- pretty much as a
4 request for factual findings, because there's source
5 material here from -- which I can check, and if you
6 don't give me anything more, well then that's fine, but
7 I'm not taking that as an agreed statement of facts, and
8 I would urge you to agree to a statement of facts.

9 The second thing is, um, I -- well before we go
10 any further, actually I should raise this. Now this is
11 jury-waived so I don't want to know Word 1 about
12 settlement beyond what I raise here. This is not a
13 settlement discussion. All of this is on the record.
14 But I, at this stage, never would go any further in a
15 jury-waived case without at least asking the attorneys,
16 "Are you talking?" Now that's all I want to know.
17 Because I think you should talk about a resolution of
18 this case short of trial, and that expresses no opinion
19 as to the merits. And I'm entitled to ask and so I do
20 ask and we'll start with the plaintiff.

21 I mean I don't want to know anything about
22 discussions as I am the factfinder here, but are you
23 talking at all? The plaintiff.

24 MS. STRICKLAND: Yes, your Honor, I'm sorry. We
25 have talked unsuccessfully, but we are very interested,

1 as always, in talking about settlement, and we think the
2 matter could be referred for a judicial settlement
3 conference or mediation, and we'd be happy to do that.

4 THE COURT: And the defense, are you talking?

5 MS. YOUNG: We had settlement talk previously,
6 your Honor, several months ago and they were not
7 successful and they haven't been resumed since. At that
8 point the parties were way too far apart for us to --

9 THE COURT: But I'm eager -- we're right up
10 against a trial now, so when we talk about a resolution
11 or we talk about referring it to a mediator, um -- well
12 let's put that to one side, because if the plaintiff
13 wanted that, I can see good reason for the plaintiff
14 getting to judgment, however that judgment may work out.
15 So we'll circle around and come back to that.

16 The next thing I wanted to say is that while I
17 think it's in the interests of justice, and therefore
18 that's how we're going to do it, to have live witnesses
19 where I can make my own credibility assessments, we
20 would save a lot of time here with respect to things
21 that are not, um, genuinely disputed, if you agreed that
22 I might, um -- notwithstanding the Federal Rules of
23 Civil Procedure, I might accept the testimony of a
24 witness otherwise available by reading that witness's
25 deposition. I'm very much open to that. And that would

1 cut down the number of witnesses as to whom it would
2 make sense to have those witnesses testify live.

3 So what I'd like to do is turn to the
4 defendants -- turn to Page 107 where the defendants
5 list the list of those -- it's not an overlong list and
6 I'm certainly not holding the plaintiff to it, but the
7 defendants' list of witnesses, um, factual witnesses
8 anyway, who, um, they are reserving the right to call at
9 trial, well that all makes sense to me, but I don't
10 think we have to call all these witnesses. So let me
11 ask. And we'll ask the defense since it's -- I'm
12 working off your list.

13 If we are going to try the case, which witnesses
14 do you want to see live, whether you call them or
15 whether the Stricklands call them?

16 MS. YOUNG: Your Honor, I think there are several
17 of these witnesses that we would definitely need to have
18 live testimony because we think it would be beneficial
19 to the --

20 THE COURT: That's what I'm asking. Which?

21 MS. YOUNG: Yeah. Certainly, your Honor, um, we
22 would need JP, we would need Ms. Strickland --

23 THE COURT: Wait. Wait. Wait. We would need
24 who?

25 MS. YOUNG: Oh, sorry. Mr. JP Davis.

1 THE COURT: All right, Davis.

2 MS. YOUNG: Mr. Anthony Martinez.

3 THE COURT: Yes, I understand that.

4 MS. YOUNG: Mr. Bill Norman. Likely Ms. Taylor.

5 THE COURT: I'm looking at your list here.

6 MS. YOUNG: The plaintiff.

7 THE COURT: Yes.

8 MS. YOUNG: And possibly there are others, your
9 Honor. But we would need to confirm more before we
10 could -- confer with our client to determine if there
11 would be additional witnesses we need to call or whether
12 we would be willing to designate their deposition
13 transcript.

14 THE COURT: You've listed them, that's fine. And
15 so long as they're here in this final pretrial
16 conference memorandum I'm not going to say it's a
17 surprise witness or anything. But I'm only giving you 5
18 days here and you want to think of what you want to
19 call.

20 So let me turn to the plaintiffs. Who else on
21 live witnesses, um -- and it doesn't have to be off of
22 their list, but who else as to live witnesses would you
23 think you might want to call?

24 MS. STRICKLAND: Your Honor, this is very awkward
25 for me to say, but we would maintain our position that

1 we think this record is sufficient to decide this case
2 and I would just like to say a couple of things about
3 that.

4 All of the witnesses that they just named are
5 relevant to the underlying EDR investigation that
6 already occurred and already resulted in a letter of
7 reprimand and factual findings against these
8 individuals. And as recognized in your order from the
9 other day, those findings are unimpeached at this stage.
10 In order to impeach those findings, they would have to
11 impeach the credibility of Chief Judge Gregory and
12 Circuit Executive Ishida who participated in --

13 THE COURT: I know I'm interrupting, I'm not
14 requiring you to put on witnesses if you have other
15 evidentiary matters. I, for instance that letter, I've
16 already expressed myself, the factual findings anyway
17 seem to be evidence in this case. As we sit now, that
18 evidence seems to me to be unimpeached. Meaning really
19 the greatest respect to you, Ms. Strickland and no
20 disrespect, I'd like to hear you testify in this case
21 and give your testimony while I'm looking at you
22 carefully and candidly, and be subjected to cross-
23 examination. I'd like to hear Mr. Martinez testify. I
24 think that is a significant element of the factfinding.
25 And indeed some of the other people that they've -- and

1 I'm not -- I haven't got a take on this case at all. So
2 you're right, I could do it without that, but I prefer
3 that. And the rules allow it, our normal mode of
4 procedure is live testimony.

5 So I'm asking you, if we're going to have live
6 testimony, and I'm not holding you to it because anyone
7 you've listed you may certainly call, and what I'm
8 encouraging is exactly what you're talking about. Let's
9 agree on what depositions I should read because, while I
10 worked hard on the summary judgment hearing, um, I mean
11 I'm a very -- I try to be a transparent person, I worked
12 with the law clerks. As a factfinder I must read, and
13 read the exhibits, I must listen to -- I, personally,
14 must listen to the recorded transcripts that you want to
15 put in evidence, and I must read the depositions, and
16 candidly I haven't done all of that yet and I haven't
17 done it in a trial sense, I've done it only to make a
18 appropriate rulings, because you wanted to do it by
19 summary judgment, and that's fine, and I've handled it.
20 Now we've got a trial, and I take my responsibility very
21 seriously, and you can be sure that if you designate a
22 deposition, I will have read it.

23 But I want to get this all to trial early in
24 September. So what we're going to get to is I want --
25 you've got more work to do as to the exhibits and I want

1 to know what depositions you want me to read because
2 come September I will have had them all read and I'll be
3 in a position to hear argument with respect to them if
4 -- once we've got the live testimony in.

5 So my question again is, as you look at the case,
6 who would you like to call live? Just so I can get a
7 feel for it.

8 MS. STRICKLAND: Yes, your Honor, um,
9 I -- everything you're saying is very reasonable and I
10 completely understand it. Unfortunately due to events
11 in this case that have been discussed in our filings, I
12 do not intend on testifying, and the reasons for that
13 are stated in our filings and I don't --

14 THE COURT: You need say no more. You need say no
15 more. If they want to call you as an adverse witness,
16 well then they can. I'm not asking that you testify.

17 But who else? Are you planning on calling anyone
18 else live?

19 MS. STRICKLAND: The only witnesses that we have
20 put on our witness list to call live are witnesses that
21 would be needed for foundational testimony for the
22 admission of exhibits, if defendant objects, but we
23 don't feel that that should be necessary because all of
24 the exhibits that we're introducing came from defendants
25 in discovery and we don't foresee any kind of dispute

1 that the foundational requirements have been met.

2 THE COURT: Okay, I don't either really. So
3 here's what I need with respect to -- I said what I need
4 with respect to depositions, I said what I need -- now
5 I'm going to tell you what I need with respect to
6 exhibits.

7 Each one of you has set out a very extensive
8 exhibit list, that's fine. Now you've got to sit down
9 together sometime before trial, I don't care when you do
10 it, and it need not be done until we're right up against
11 trial, but I'm not going to be looking over exhibits
12 until we get to trial. You've got to give me a single
13 exhibit list and that exhibit list will start with the
14 exhibits that the plaintiffs want to introduce and
15 they'll all have numbers, and when -- and then the
16 defendant's to which there are no objections. The
17 exhibits to which there are no objections, they're in
18 evidence, you've agreed to them, so give them numbers.
19 Exhibits to which there are any objections -- and you
20 people are working well together, it doesn't seem that
21 there are going to be many objections, give them
22 letters, and the letters are to the base 26, by which I
23 mean A to Z, then AA, AB, AC, AD, not AA, BB, CC. I
24 once had a case we got up to 7Qs, the Court Reporter
25 couldn't distinguish there being 6 or 7Qs, it was

1 terrible. So I'm a peasant on this. Do it my way. If
2 you get to a number, I'm going to take it that it is
3 admitted in evidence.

4 Now what does that mean? It doesn't mean it's
5 established, it means it's evidence, which means as the
6 factfinder I may decide that it is both authentic and I
7 may decide that its substance is probative. That's all.
8 And I will use the normal means of reasoning to arrive
9 at that result. I don't think there should be much
10 dispute. But I want a single exhibit list.

11 Now let's talk about the trial because of this
12 business about going to judicial mediation or something.
13 Look, I can give you a 5-day trial starting on the 5th
14 of September, going 9:00 till 1:00 for 5 days, except
15 the 5th is the Tuesday after Labor Day, so I may be
16 picking a jury on Monday or the following Monday. So
17 I'm not sure I'm going to give you the, um -- that
18 following Monday. So the 5th of September would be the
19 5th, 6th, 7th, 8th, that's four days. The 11th, I, um
20 -- we'll have to see during that week how the rest of my
21 trial calendar is falling out. But if I don't -- if I
22 start a jury case, I pick the jury on the 11th, I will
23 give you the 12th.

24 Now the 5 days, 9:00 till 1:00 are for evidence.
25 That's not -- I'm not arguing that you should, um -- I'm

1 not requiring that you do argument during that 5 days,
2 but there are three stages of argument here in a jury-
3 waived case and they are these.

4 Once the plaintiff has presented her case -- if
5 her case is entirely a documents case, that's fine,
6 that's fine. Once we are clear I have read those
7 documents, I myself have read them, then at that stage
8 it will be open, as in any jury-waived case, for the
9 defense to say it's not persuasive on any of the live
10 theories that would bring the plaintiff to a verdict.
11 Then -- it's possible I could so come out, it's possible
12 I could say "No, I want to hear the defense's evidence,"
13 and then we'd go forward. Then when the defense has
14 presented all its evidence, then we'll have another
15 stage for argument. Again, I could say the plaintiff
16 hasn't made it out or the plaintiff has made it out on
17 any one of the variety of theories.

18 And then we would go -- at least the logic of this
19 case presents itself this way, that then we would go on
20 to the front-pay damages, which are what the Fourth
21 Circuit has said is the remedy here, and I would hear
22 from both sides after that. Then we would have final
23 final argument and I would take the matter under
24 advisement.

25 Now let's --

1 How does that suit the plaintiff?

2 MS. STRICKLAND: Yes, your Honor, I mean all of
3 that in theory, it makes sense and it's reasonable. I
4 just want to put on the record that, um --

5 THE COURT: In theory? That's how I try a case.

6 MS. STRICKLAND: No, I understand. I just want to
7 see --

8 MS. YOUNG: In theory for me? That's how I do it.

9 MS. STRICKLAND: Yeah, I just want to state the
10 obvious, which is that my, um, essentially entire legal
11 team that we were relying on to try this case withdrew
12 on the eve of trial and Cooper and I have never done a
13 trial, jury-waived or otherwise. So we just feel
14 that -- it's not really -- it's not a criticism of you.

15 THE COURT: Oh, and I'm not taking it that way.
16 I'm not. And maybe judicial mediation is worthwhile.
17 There is a public interest, wholly apart from your
18 interest, in getting the matter resolved. But I am
19 sensitive, because it was raised earlier, that you want
20 to get resolution here and for very good reason. So
21 this isn't the earliest I can do it. If you want to go
22 off to a trial later on and try judicial mediation, um,
23 how would you envision doing that?

24 We have -- in this district, and you see I know I
25 can do this, which everyone might like, um, we have just

1 marvelous magistrate judges who are superb mediators and
2 one has a nationwide reputation, Judge Maryanne Bowler,
3 who has served as a mediator for multidistrict
4 litigation outside the District of Massachusetts. And
5 this is something I've examined -- I've tried this
6 ground before, Judge Bowler and I have served sometime
7 together, and certainly I would be willing to ask her if
8 she'd like to mediate this case, but that would pretty
9 much obviate a trial in early September. I mean we're
10 about to -- I don't know what her vacation status is.
11 I'd just be asking her.

12 But practically what are you thinking about in
13 judicial mediation?

14 MS. STRICKLAND: You have to understand that --

15 MR. STRICKLAND: That's a very difficult question
16 because of the preliminary injunction that has been
17 pending for so long and it's just -- this is a rock and
18 a hard place, and the resistance to mediation up until
19 this. But we asked for it before, it's required under
20 the local rules here, we didn't get it, um, so it might
21 not be worthwhile.

22 THE COURT: Well you see this is the final
23 pretrial conference today, I'm telling you when you'll
24 get a trial. I'm not a mediator but I am a judge. You
25 know cases can always be settled. My instinct is to

1 hold up the trial schedule and leave it to you people to
2 suggest something, "you people" meaning the defendants
3 as well.

4 Now let me turn to the defendants. How does that
5 trial schedule suit?

6 MS. YOUNG: Your Honor, the week of September 5th
7 would be really difficult because several of our
8 critical witnesses are out of the office that week.

9 THE COURT: I'm, um -- I'm really disinterested in
10 that, um, with all respect.

11 MS. YOUNG: Okay.

12 THE COURT: I mean this is a trial and, um, I
13 think it's up to you to get witnesses.

14 Now I'm perfectly amenable to taking witnesses out
15 of order, but when you tell me, "Well we can't do it
16 that week, everyone's out of the office." Well of
17 course we're gearing up here in Massachusetts too. So
18 I'm going to do a jury-waived cause and then I'll get my
19 first jury case on the following week. I live in the
20 real world. No, no, you can get your witnesses, you've
21 got more than a month's time, vacations are largely
22 over.

23 Otherwise to that, what problems do you have?

24 MS. YOUNG: Just to be clear, your Honor, I
25 believe some of those are work conflicts. But the week

1 of September 12th would look much better for our
2 witnesses.

3 As for mediation, defendants are open to do
4 mediation, but we would need to push back the trial date
5 just because of the amount of time and resources it's
6 going to take to prepare for trial.

7 THE COURT: But you see I agree with that, I agree
8 with that if you would agree on mediation, but I'm not
9 hearing anything about an agreement on mediation and no
10 one's given me a practical suggestion as to who the
11 mediator should be. I suggested quite candidly a
12 professional friend of mine whom I have enormous
13 professional regard for, but no one has jumped at that
14 bait. So I'm setting the trial date for the 5th of
15 September. Get ready for trial. Of course I know the
16 12th of September would be more convenient, I expect to
17 be trying a jury case that week and for each of the
18 weeks thereafter. I have a month-long antitrust case in
19 October. So, um, this case is set down for the 5th of
20 September.

21 There will be openings of 15 minutes, the final,
22 per side, if you wish. There will be closings of half
23 an hour per side, but that's not an invitation to take
24 that long. Your requests for findings and rulings may
25 be filed at any time up to and including the date of

1 the, um, final closing arguments. They may be filed
2 thereafter, but you should understand that I intend no
3 delay while we wait for a transcript -- though I have
4 great respect for Mr. Romanow and he's a superb Court
5 Reporter, no, we're going to get busy deciding this
6 case.

7 And now I think I've pretty much gone over the
8 agenda that I need to go over, so I'm open for
9 questions. If, um -- well let me say this to you -- to
10 the Stricklands because it may be that the, um, the
11 defense will call Ms. Strickland as an adverse witness.
12 If they do, um, they of course have the right to cross-
13 examine her. I follow the procedure that if the defense
14 does that, then Ms. Strickland has -- or I will expect
15 Mr. Strickland, I will expect you to do the examination.
16 But you may also cross-examine Caryn Strickland. And
17 again if they call her as an adverse witness, they're
18 going to be confined to -- you're going to be confined
19 on your cross-examination to the matters that they went
20 over on their direct by way of cross.

21 And now I realize I did leave one thing out. You
22 make reference to expert witnesses here. Have we got
23 expert reports?

24 MS. YOUNG: Yes, your Honor, we do, both parties
25 do.

1 THE COURT: All right. Understand that no witness
2 will testify to anything that's not in the expert
3 report. And again I am open, by agreement, to your
4 resting on the expert reports and not calling the
5 witnesses live, and, you know, I'll just evaluate the
6 expert report. But that has to be by agreement.

7 All right. Questions?

8 (Pause.)

9 MS. YOUNG: Your Honor, defendants have a couple
10 of questions, if that's all right?

11 THE COURT: Sure.

12 MS. YOUNG: If the parties agreed to have your
13 colleague mediator serve as a mediator in this case in
14 the next day or two, could we possibly file a notice to
15 the Court about that, if there's agreement?

16 THE COURT: If you do and the answer is "yes,"
17 well then the trial date is off. So that's to be set
18 just as soon as I can reset it should mediation not
19 prove successful.

20 MS. YOUNG: Understood, your Honor.

21 Additionally, what is your Honor's deadline for
22 pretrial motions, such as motions in limine?

23 THE COURT: Really right up until the eve of
24 trial. I will tell you that motions in limine,
25 especially -- I like motions in limine, they're, um,

1 really almost better than a trial brief because they
2 tell me where the tension points are. I but rarely
3 grant them. What I do is read them and try to be
4 prepared on them and then I see how the trial develops.
5 And that's not meant to discourage you from filing, I am
6 very open to the filing of motions in limine.

7 MS. YOUNG: Thank you, your Honor.

8 THE COURT: Here with so little in dispute, there
9 may be some interesting evidentiary issues, but I don't
10 think evidence looms so large here. Again being just as
11 candidly as I can, um, what this case comes down to is
12 what I'm going to make of this evidence. I've looked at
13 a lot of it. I've got to look at more of it. I do want
14 to hear live witnesses and evaluate their credibility.
15 But I'm not looking towards this as a massive evidence
16 workout. But if I'm mistaken, you'll bring it my
17 attention.

18 MS. YOUNG: Yes, your Honor. And I believe the
19 defendants have one final question.

20 Your Honor, will we be permitted to call witnesses
21 that are not named in this pretrial joint filing?

22 THE COURT: No one will call anyone that's not
23 named in this joint pretrial filing.

24 MS. YOUNG: Understood, your Honor. Thank you.

25 THE COURT: And now for the Stricklands,

1 questions?

2 MR. STRICKLAND: Yes. I want to touch on, um, you
3 said we could submit expert reports by agreement. Can
4 we do, um, expert deposition designations?

5 THE COURT: Exactly, again by agreement.

6 MR. STRICKLAND: Oh, so the designations require
7 agreement as well?

8 THE COURT: Yes, because the normal rule, you see,
9 is that witnesses testify live. So unless you agree,
10 the witness has to be produced and testify under oath.
11 But here I am telling you that if you'll agree, I am
12 more than amenable, in fact I am eager to have you agree
13 to deposition excerpts. And, um, I guarantee you that,
14 um, no factual finding will ever be rendered until I
15 have read those depositions. I take that just like
16 evidence. But I'm hopeful you'll get together and send
17 me depositions in August that I will have read before
18 the 5th of September.

19 MR. STRICKLAND: So even in situations where
20 there's the unavailability of the witness because of the
21 --

22 THE COURT: Oh, well, no, if the rule governs --
23 if the rule governs, then the rule governs.

24 MR. STRICKLAND: Okay. So, for example, Anthony
25 Martinez lives in South Florida, so he's over 100 miles

1 away, so we're going to designate his deposition. You
2 know there's several instances of that that we'll be
3 using to basically accept your offer to present this
4 case on the documents.

5 THE COURT: Right. But you have every right to
6 depend upon my rigorously following the Federal Rules of
7 Evidence.

8 And, Mr. Cooper, you know it's -- it's not a sign
9 -- I'll be very candid here. It's not a sign of -- if
10 this is your first trial outing for the two of you, it's
11 never a sign of weakness to ask a question. There's no
12 -- and let me tell you, it's not any sort of help to one
13 side or another to ask questions about trial procedure
14 of Ms. Gaudet, she is as good a Courtroom Deputy as you
15 would find in any district anywhere. And during the
16 course of the trial, if you are unclear as to a ruling
17 that the Court has made, it's never wrong to say "Why
18 are you doing that, Judge?" I should have a reason.

19 MR. STRICKLAND: Oh, in all honesty I don't even
20 know where to start with my questions. I mean we're all
21 within months of the trial and we're kind of --

22 THE COURT: I think it is -- actually a trial is,
23 um, it's an exercise in reaching out for justice and the
24 logic of, um, the logic of the process is really very
25 good.

1 Now one thing I also ignored. I know you'd prefer
2 to do this in Ashville. We are going to go wherever the
3 Western District of North Carolina tells us to go, that
4 is to say it looks like we're going to be in Charlotte.
5 You'll know -- well I'm going to be in Boston. But it
6 looks like you're going to be in a courtroom in
7 Charlotte. I will be in a courtroom here in Boston.
8 And we will all be able to see each other. But we will
9 know that well before the 5th of September and
10 Ms. Gaudet will inform you at once.

11 They have a very heavy criminal workload, I
12 understand from the clerks there, and, um, again this is
13 an important case, important to the litigants and beyond
14 the litigants, but it is a civil case and the criminal
15 cases comes first.

16 Any other questions?

17 MR. STRICKLAND: As far as deposition designations
18 though, will Ashville control? Because that's the
19 division that controls where the --

20 THE COURT: What do you mean "Will Ashville
21 control?"

22 MR. STRICKLAND: It's the location of the
23 courthouse for the 100-mile rule.

24 THE COURT: I don't know the answer to that
25 question, that's something that can be researched.

1 MR. STRICKLAND: Well we've been relying on this
2 case would be tried in Ashville.

3 THE COURT: Well it was filed in the Ashville
4 division. There may not be any objection.

5 MR. STRICKLAND: Okay. And as far as the trial
6 time, is it going to be evenly split between the
7 parties?

8 THE COURT: It is, and I'm the timekeeper.

9 MR. STRICKLAND: And it's going to be kind of a
10 chess-clock type of thing?

11 THE COURT: It is, to the nearest 5 minutes.

12 All right. If there are no other questions.
13 Again, if you want mediation, let me know right away
14 because I'll get in touch with Magistrate Judge Bowler,
15 but otherwise we're on for the 5th of September. If you
16 were to settle the case, a simple phone call to
17 Ms. Gaudet is all that's necessary. Don't ever make
18 that call unless the case in fact is settled. Because
19 if you make that call, don't spend another dime, and all
20 the deadlines are off, but if you later come and say
21 it's been unwound, I will be very sticky indeed.

22 I have enjoyed working with you and I say that
23 with sincerity and I will enjoy -- well, I, of course,
24 institutionally hope you settle, but if you don't, I'm
25 sure I will enjoy the trial. And I wish you well. And

1 I think we're ready to adjourn.

2 MS. YOUNG: Your Honor, defendants have one more
3 question.

4 THE COURT: Yes.

5 MS. YOUNG: Will the parties be able to call
6 expert witnesses that are not named in the joint
7 pretrial statement?

8 THE COURT: No.

9 MS. YOUNG: Understood, your Honor. Thank you.

10 THE COURT: I mean that's why we do this. The
11 whole idea, the whole genius of the Rules of Civil
12 Procedure is to narrow proceedings, not to expand them,
13 and having been given ample time and warning, we now
14 know the parameters of how we're going to do this work.

15 MS. YOUNG: Understood. Thank you very much, your
16 Honor.

17 THE COURT: Thank you. We will recess.

18 (Ends, 1:15 p.m.)
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER,
do hereby certify that the foregoing record is a true
and accurate transcription of my stenographic notes
before Judge William G. Young, on Thursday, July 27,
2023, to the best of my skill and ability.

/s/ Richard H. Romanow 08-01-23

RICHARD H. ROMANOW Date